



BELLA VISTA

A place to call home

DEPARTMENT OF COMMUNITY
DEVELOPMENT SERVICES

616 W. LANCASHIRE BLVD.

BELLA VISTA, AR 72715

PHONE: (479) 268-4980

BOARD OF CONSTRUCTION APPEALS REGULAR MEETING

DATE: JUNE 14, 2016 AT 3:00 P.M.

LOCATION: DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES
CONFERENCE ROOM
616 WEST LANCASHIRE BOULEVARD
BELLA VISTA, AR 72715

AGENDA

I. CALL TO ORDER

II. ROLL CALL

Members: Gary Young, Chairman; Dwayne Smith, P.E., Vice-Chairman; John Nuttall, Secretary; Stan Moore; and Tim Hull

III. MINUTES

A. Minutes from previous regular meeting: May 10, 2016

IV. NEW BUSINESS

None

V. UNFINISHED BUSINESS

A. Code changes: Review criteria and sample application for this board

VI. OPEN DISCUSSION

None

VII. ANNOUNCEMENTS

- A. Next City Council Work Session will be held on Monday, June 20, 2016, at 5:30 PM in the Bella Vista City Hall Conference Room at 101 Town Center.
- B. Next regular meeting of the Board of Zoning Adjustment meeting is scheduled for Tuesday, July 19, 2016, at 7:00 PM in the Bella Vista City Hall Conference Room at 101 Town Center.
- C. Next City Council Regular Session will be held on Monday, June 27, 2016, at 6:30 PM in the Bella Vista American Legion Hall at 1889 Bella Vista Way.
- D. Next Planning Commission Work Session will be held on Thursday, June 30, 2016, at 4:30 PM in the Bella Vista City Hall Conference Room at 101 Town Center.
- E. Next Planning Commission Regular Session will be held on Monday, July 11, 2016, at 6:30 PM in the Bella Vista City Hall Conference Room at 101 Town Center.
- F. Next regular meeting of the Board of Construction Appeals is scheduled for Tuesday, July 12, 2016, at 3:00 PM in the Community Development Services Conference Room at 616 W. Lancashire Blvd.

VIII. ADJOURNMENT

3:00 P.M.

TUESDAY, JUNE 14, 2016

CHAPTER 103 – BUILDING AND BUILDING REGULATIONS
ARTICLE II. - CONSTRUCTION STANDARDS
DIVISION 2. - FIRE PREVENTION CODE

Sec. 103-44. - Board of ~~e~~C~~on~~struction ~~a~~A~~ppe~~als.

(a) *Creation and appointment.* There is hereby created a ~~b~~B~~o~~ard of ~~e~~C~~on~~struction ~~a~~A~~ppe~~als.

(1) *Membership.*

- a. The ~~b~~B~~o~~ard of ~~e~~C~~on~~struction ~~a~~A~~ppe~~als shall consist of five members.
- b. All members shall be qualified electors residing in the city and shall not hold any other municipal office or appointment. All members shall have experience and training to pass on matters pertaining to building construction and shall not be employed by the city.
- c. All members shall be appointed by the mayor and approved by the city council.
- d. The building official shall serve as an ex-officio member of the Board.

(2) *Terms.*

- a. Initial. Members shall, in the initial appointment, serve terms as follows: One member for a term of one year; two members for a term of two years; and two members for a term of three years.
- b. After the initial appointment, members shall serve terms for three years. All terms shall expire on January 1 of each year.
- c. Appointments to fill vacancies shall be for unexpired terms only.
- d. In the event of the death, resignation, or removal of any member before the expiration of his term, a successor shall be appointed by the mayor to serve his unexpired term.
- e. There shall be no limit to the number of times a member may be reappointed to the Board.

(3) *Removal.* A member of the ~~b~~B~~o~~ard of ~~e~~C~~on~~struction ~~a~~A~~ppe~~als, once qualified, can thereafter be removed during his term of office only for cause on a majority vote of the city council.

(b) *Organization.*

- (1) *Officers.* A chairperson, vice-chair, and secretary shall be elected annually by ~~b~~B~~o~~ard of ~~e~~C~~on~~struction ~~a~~A~~ppe~~als from among its membership. The chairperson, or in his absence, the vice-chair and then the secretary, shall preside at all meetings, shall decide all points of order or procedure, and, as necessary, shall administer oaths and compel the attendance of witnesses.
- (2) *Rules.* The ~~b~~B~~o~~ard of ~~e~~C~~on~~struction ~~a~~A~~ppe~~als shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of the building code.
- (3) *Meetings.* Meetings shall be held ~~at least once~~ monthly. Special meetings may be called, subject to notification by law, by the chair or by a majority of the membership. If no business is pending before the Board, the meeting may be cancelled. All meetings shall be open to the public.
- (4) *Minutes.* The ~~b~~B~~o~~ard of ~~e~~C~~on~~struction ~~a~~A~~ppe~~als shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicate such fact; it shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the city administrative office.
- (5) *Quorum.* A quorum of the Board shall consist of four. The concurring vote of a majority of the quorum shall be necessary to decide on any matter upon which it is required to pass under this article or to revise any order or decision of the approved city authority that has enforcement powers.

(c) Powers and duties. The Board of Construction Appeals shall have all the powers and

duties prescribed by law and by this article. Claims and appeals to the board are limited to reviewing and determining:

- (1) The true intent of the code or the rules legally adopted thereunder have been incorrectly interpreted;
- (2) Whether the code does not full apply; and/or
- (3) Whether an equally good or better form of construction is proposed.

Sec. 103-45. Appeals

- (a) When the building official shall disapprove an application, or the applicant is aggrieved by the interpretation of the building official, the applicant may appeal such decisions to the ~~b~~Board of ~~e~~Construction ~~a~~Appeals. An appeal shall stay all proceedings of the action appealed, unless the person affected by such appeal certifies to the Board of Construction Appeals by reason of facts stated in the certificate, that a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board or a court of record on application, and notice to the person from whom the appeal was taken.
- (b) Requests for ~~variances~~ exceptions from the building code may be made to the ~~b~~Board of ~~e~~Construction ~~a~~Appeals when an applicant wishes to deviate from standard construction methods outlined in the building code.
- (c) All appeals to the ~~b~~Board of ~~e~~Construction ~~a~~Appeals shall be made on forms furnished by the building official and approved by the mayor. All such appeals shall be accompanied by payment of the currently adopted fee.
- (d) All appeals from final actions taken by the ~~b~~Board of ~~e~~Construction ~~a~~Appeals shall be taken to the circuit court by any person or persons, or any Board, taxpayer, department, Board, or bureau of the City aggrieved by any decision of the Board of Construction Appeals.
- (e) Application.

(1) Written Application. All exception requests shall be made to the Board of Construction Appeals pursuant to the City's Development Calendar after a decision has been rendered by the building official and/ or his or her designee. Every appeal or application shall refer to the specific provision of the Code involved and shall exactly set forth:

- a. The interpretation that is claimed;
- b. The reason for which the permit is sought; and
- c. The grounds on which it is claimed that the exception should be granted.

(2) Scale Drawing. Each applicant shall submit, pursuant to the Bella Vista Development Calendar, a scale drawing or detail showing the requested exception along with all relevant information.

(3) Submittal. The appeal or application shall be filed with the building official or his / her designee who shall forthwith transmit to the Board all papers constituting the record upon which the action being appealed from was taken.

(4) Fees. The fee for any appeal or application to the Board of Construction Appeals shall be established by the City Council, are subject to periodic change, and are non-refundable. Fees shall be paid when the application is filed. The Mayor may exempt

all or part of the applicable fee if the waiver or reduction would serve the public interest, alleviate an unfair burden upon on applicant, or be beneficial to the City as a whole.

(f) Review Guidance.

(1) An exception from the terms of the Municipal Code shall not be granted by the Board of Construction Appeals unless and until the applicant demonstrates at least one of the following:

- a. Special conditions and circumstances exist which are peculiar to only this structure or building and not to any other; or
- b. Literal interpretation of the provisions of the Municipal Code would deprive the applicant of rights commonly enjoyed by other properties under the Municipal Code; or
- c. Special conditions and / or circumstances do not result from the actions of the applicant and if they do, what the conditions and / or circumstances are; or
- d. The reasons set forth in the exception application justify the granting of the exception will be in harmony with the spirit, general purpose, and intent of the City of Bella Vista's Municipal Code; or
- e. The reasons set forth in the application are the minimum that will make possible the reasonable use of the building or structure.

(2) Conditions. In granting any exception, the Board of Construction Appeals may prescribe additional appropriate conditions and safeguards that it deems necessary or desirable. The exception also shall not:

- a. Be injurious to the neighborhood or otherwise detrimental to the public health, safety, and welfare; or
- b. Remove the obligations of the applicant to meet all other applicable codes, ordinances, laws, or statutes.

(3) Violations. Violations of any conditions and safeguards, when made a part of the terms under which the exception is granted, shall be deemed a violation of the Municipal Code.

(4) Allowances. Under no circumstances shall the Board of Construction Appeals grant an exception that is contrary to the intent of the Municipal Code.

(g) Time Limit on Permits. Applicants must start or establish the uses of lands, structures, or buildings within one hundred eighty (180) days from the date of approval or the exception will become null and void.

(h) Reconsideration. If a request is denied, it shall not be reconsidered by the Board of Construction Appeals within one year from the date of denial of the exception request. The resubmission must meet all requirements for an exception request and will be considered a new exception request.

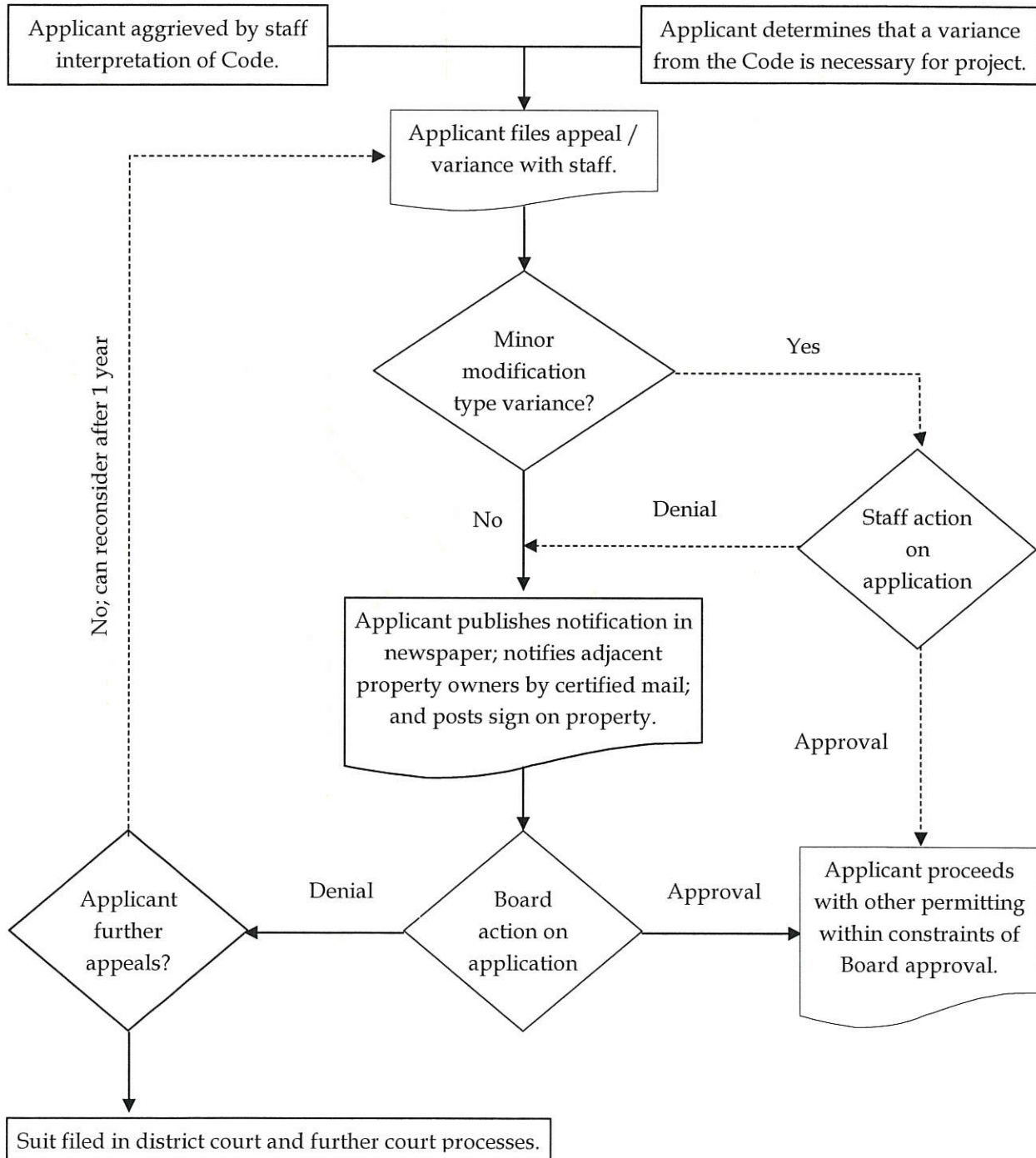
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CONSTRUCTION VARIANCE

APPEALS PROCESS



CONSTRUCTION VARIANCE

APPLICATION



A separate application form is required for each variance of the Municipal Code. Please fill out this form completely, supplying the necessary information and documentation to support your request. Your application will not be processed until the application is completed and the required documentation is provided. All application fees are non-refundable.

Fee: \$100.00 per request

MAIN CONTACT (select one):

☐ Applicant / Agent

☐ Owner

PROPERTY INFORMATION

Property Address:		Parcel #:
Lot:	Block:	Subdivision:

OWNER INFORMATION

OWNER CERTIFICATION: By my/our signature below, I/we certify under penalty of perjury that I am/we are the owner(s) of the property that is the subject of this application and that I/we have read this application and consent to its filing. Further, I/we authorize the agent, listed below, to represent me/us in proceedings with the City of Bella Vista regarding this application. *(Please see reverse for more acknowledgements).*

Name:		Owner Signature:		
Mailing Address:		City:	State:	Zip:
Phone:	Phone:	Email:		
Name:		Owner Signature:		
Mailing Address:		City:	State:	Zip:
Phone:	Phone:	Email:		

APPLICANT / AGENT INFORMATION

APPLICANT / AGENT ACKNOWLEDGEMENT: By my signature below, I certify under penalty of perjury that the foregoing statements and answers herein made all data, information, and evidence herewith submitted are in all respects, to the best of my knowledge and belief, true and correct. I understand that submittal of incorrect or false information is grounds for invalidation of application completeness, determination, or approval. I understand that the City might not approve what I am applying for, or might set conditions on approval. *(Please see reverse for more acknowledgements).*

Name:		Signature:		
Mailing Address:		City:	State:	Zip:
Phone:	Phone:	Email:		

This application is not valid unless signatures on both the front and back of this form have been provided.

FOR OFFICE / REVIEW USE ONLY

Application Date:	File #:	Zoning:	Board Date:
Reviewer:	How Paid: <input type="checkbox"/> Cash <input type="checkbox"/> Check <input type="checkbox"/> Plastic		Board Action:
Permit #:	Permit Fees:		Receipt #

APPLICATION CHECKLIST	
<input type="checkbox"/>	1. A completed application with appropriate fee. Applications will not be processed unless all of the required information is provided, including the items below.
<input type="checkbox"/>	2. Applications must include that interpretation claimed, the use for which the permit is sought, and the details of the variance and the grounds on which it is claimed that the variance should be granted.
<input type="checkbox"/>	3. Scaled drawing showing the requested variance along with all relevant information, including the exceptional condition or the situation of the property which causes the exceptional practical difficulty or undue hardship for which relief is being sought.
<input type="checkbox"/>	4. Any additional information that conveys the exceptional hardship on the property including photos, maps, etc.

ACKNOWLEDGEMENTS	
1.	<i>Fees:</i> The fee for any appeal or application to the Board of Construction Appeals is non-refundable.
2.	<i>Effect of Appeals:</i> An appeal shall stay all proceedings of the action appealed from, unless the person affected by such appeal certifies to the Board of Construction Appeals that, by reasons of facts stated in the certification, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board or a court of record on application, and notice to the person from whom the appeal was taken.
3.	<i>Time Limits on Permits:</i> No order permitting the use of a building or premises, or the alteration or erection of a building, shall be valid for a period longer than 120 days. Such use must be started or established or the erection or alteration is started within such period and proceeds to completion in accordance with the terms of a building permit.
4.	<i>Reconsideration:</i> If a variance request is disapproved, it shall not be reconsidered by the Board of Construction Appeals within one year from the date of denial of the variance request. The resubmission must meet all requirements for a variance request and shall be a different variance request.
5.	<i>Appeals from Board of Adjustment:</i> Any person or persons, or any board, taxpayer, department, board or bureau of the City aggrieved by any decision of the Board of Construction Appeals may seek review by a court of record of such decision, in the manner provided by the laws of the State of Arkansas.
Owner / Agent Signature: _____ Date: _____	

This application is not valid unless signatures on both the front and back of this form have been provided.

The application continues on the next page.

FOR OFFICE / REVIEW USE ONLY			
Application Date:	File #:	Zoning:	Board Date:
Reviewer:	How Paid: <input type="checkbox"/> Cash <input type="checkbox"/> Check <input type="checkbox"/> Plastic		Board Action:
Permit #:	Permit Fees:		Receipt #

VARIANCE REQUEST INFORMATION

Variance Requested (supply code section you wish to vary):

Section 103-45(f) of the Municipal Code requires that each variance request meet at least one of the following criteria in order to be granted. Please attach additional sheets of paper to this application for continuations of variance request justifications.

Variance Review Criteria	Justification of Variance Request
1. Does the literal interpretation of the provisions of the Municipal Code deprive the applicant of rights commonly enjoyed by other properties?	
2. Do special conditions and circumstances exist which are peculiar to only this land, structure or building and not to any other?	
3. Are special conditions and circumstances the result of any action by the applicant? If yes, do new special conditions or circumstances exist? If yes, what are they?	
4. Does granting the variance keep the spirit, general purpose, and intent of the provisions of the Municipal Code?	
5. Is the request the minimum variance that will make possible the reasonable use of the building or structure?	
6. Is the variance injurious to the neighborhood or otherwise detrimental to the public, health, safety, and welfare?	
7. Will the granting of the variance support the obligations to comply with all other applicable statutes, ordinances, laws, or regulations?	

PUBLIC HEARING PROCEDURES



The following are procedural rules for applications considered by the Board of Construction Appeals. These are intended to provide the applicant an idea of what to expect during the public hearing.

1. Each application to be considered by the Board will be filed on the proper form and be accompanied by the currently adopted fee for such applications. All applications shall meet the respective submittal requirements of the Municipal Code, and any supplemental information required by the Director of Community Development Services, or his or her designee.
2. The Director of Community Development Services, or his or her designee, shall receive all such applications in accordance with the Bella Vista Development Calendar.
3. All applications shall be placed on the agenda and will be heard by the Board of Construction Appeals in the order that are received, except that an item may be advanced on the agenda by consent of the Board once good cause is shown.
4. Applicants shall appear in his or her own behalf or be represented by agent or attorney at the hearing. In the absence of any appearance by the applicant, agent, or attorney - and in such cases as the Board feels necessary - an application may be deferred until the next regular meeting if the application is not represented.
5. The order of the hearing, and allowed speaking times, shall be as follows. Board of Construction Appeals members may interject questions after each phase, or may hold them until the end of the public hearing.
 - a. Director of Community Development Services' (and/or staff designee's) side of the case, with ten (10) minutes to speak;
 - b. Applicant's side of the case, with fifteen (15) minutes to speak;
 - c. Interested property owners' opinions, with a maximum three (3) minutes to speak for each person present; and
 - d. Staff and/or Applicant's rebuttal, with ten (10) minutes to speak by each.
6. After the public hearing but prior to deliberations on each case, the Board of Construction Appeals reserves the right to defer action on the case until the next regularly scheduled meeting, if necessary.
7. An applicant may withdraw his or her application or appeal at any time prior to the decision of the Board of Construction Appeals.
8. After the public hearing, the members of the Board of Construction Appeals shall deliberate the case and reach a final decision on whether the request is granted.
9. If an application is approved by the Board, all necessary permits for the initiation of work shall be obtained within the time frames outlined in the respective Ordinances, unless a time extension is granted by the Board. Otherwise, the Board approval of the application will be considered void at the end of time allowed under the respective Ordinances.
10. If a variance request is denied by the Board, the Board shall not reconsider the variance for a time period of one (1) year from the date of denial.